

REMARKS

Reconsideration of this application in view of the above amendments and the remarks below is respectfully requested. Claims 1, 13, 20, 24, 36, 43, 44, and 51-54 are amended. No claims are added or cancelled. Hence, Claims 1, 3-24, and 26-54 are pending in this application.

I. ISSUES NOT RELATED TO PRIOR ART

A. 35 U.S.C. § 101 – Claims 1, 3-24, and 26-54

Claims 1, 3-24, and 26-54 are rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Applicant disagrees that the steps, even before amendment, are nothing more than a mathematical algorithm and abstract idea. Nevertheless, to advance prosecution, Applicant has amended independent claims 1, 13, 20, 24, 36, 43, 44, and 51-54. Removal of the rejection is respectfully requested.

B. 35 U.S.C. § 101 – Claims 24 and 36

Claims 24 and 36 are rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Applicant has amended claims 24 and 36 to address this issue. Removal of the rejection is respectfully requested.

C. 35 U.S.C. § 101 – Claims 43, 53, and 54

Claims 43, 53 and 54 are rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Applicant has amended claims 43, 53 and 54 to address this issue. Removal of the rejection is respectfully requested.

D. 35 U.S.C. § 112 – Claims 1, 3-24, and 26-54

Claims 1, 3-24, and 26-54 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly omitting essential elements. Specifically, the Office Action asserts that Claim 1 fails to establish how any of the operational steps interrelate to the “network element”

mentioned in the preamble. Applicant disagrees that the steps, even before amendment, omit essential steps. Nevertheless, to advance prosecution, Applicant has amended independent claims 1, 13, 20, 24, 36, 43, 44, and 51-54. Removal of the rejection is respectfully requested.

II. ISSUES RELATED TO PRIOR ART - 102(b) - *PURANIK*

Claims 1, 7-9, 13, 14, 24, 30-32, 36, 37, 43-47, 51 and 54 are rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Puranik et al., U.S. Patent No. 6,003,090 (hereinafter "*Puranik*"). Applicant submits that these claims, as amended, are patentable over *Puranik*.

Independent Claim 1

Claim 1 is directed to a method of measuring availability of a network element or service, and recites:

determining a second availability value based on a first availability value, a first time value, a second time value that differs from the first time value, and a first operational state value; and
storing, in memory, the second availability value;
wherein determining the second availability value further comprises:
determining a dividend based on the first availability value, the first time value, the second time value, and the first operational state value;
and
dividing the dividend by the second time value;
wherein the first availability value indicates the availability of the network or service at the first time value;
wherein the second availability value indicates the availability of the network or service at the second time value; and
wherein the first time value indicates a first time that is earlier than a second time indicated by the second time value. (Emphasis added)

Claim 1 recites **determining a second availability value based on a first availability value, a first time value, a second time value that differs from the first time value, and a first operational state value.** According to Claim 1, the second availability value indicates the availability of the network or service at the second time value. Similarly, the first availability value indicates the availability of the network or service at the first time value. As Claim 1 recites, the first time value indicates a first time that is earlier than a second time

indicated by the second time value. Claim 1 also recites determining a dividend based on the first availability value, the first time value, the second time value, and the first operational state value. Claim 1 further recites dividing the dividend by the second time value. At least these recited features in Claim 1 are not disclosed in *Puranik*.

Puranik pertains to an approach in which availability of a computer network is determined by analyzing specific pairs of source/destination devices in the network as well as alternative paths between the devices. The topology of the network is analyzed so as to determine all paths between the source/destination devices. The availability of devices on each path is determined. A relative weight may be assigned to various paths. Using the relative weights and the availability on each path, the (overall) availability of the network, i.e., the aggregate network availability, for the source/destination devices is determined. *See* Abstract.

The Office Action contends that the first availability value of Claim 1 is the availability of a path in *Puranik* and that the second availability value of Claim 1 is the overall availability of all paths in *Puranik*. This contention is incorrect. First, the first availability value and the second availability value in Claim 1 indicate the availability of the **same** entity, i.e., the network or service. On the other hand, in *Puranik*, the availability for a path and the aggregate network availability indicate availability of **different** entities. Second, the second availability value of Claim 1 is determined in part based on the first availability value of Claim 1, which indicates the availability at an **earlier** time than a time at which the second availability value indicates the availability. In other words, in Claim 1, an earlier availability value in part determines a later availability value. On the other hand, in *Puranik*, even though the availability for a path and the aggregate network availability indicate availabilities of different entities, both availabilities pertain to the same time.

For the reasons given above, Claim 1 is patentable over *Puranik*. Reconsideration is respectfully requested.

Claims 13, 20, 24, 36, 43, 44, and 51-54

Claims 13, 20, 24, 36, 43, 44, and 51-54 each recite similar features as those discussed above with respect to Claim 1. Therefore, Claims 13, 20, 24, 36, 43, 44, and 51-54 are patentable for at least the same reasons discussed above as to Claim 1. Reconsideration is respectfully requested.

Claims 7-9, 14, 30-32, 37, and 45-47

Claims 7-9, 14, 30-32, 37, and 45-47 are dependent upon and thus include each and every feature of Claim 1, 13, 20, 24, 36, 43, 44, 51, 52, 53, or 54 discussed above. Therefore, it is respectfully submitted that Claims 7-9, 14, 30-32, 37, and 45-47 are allowable for at least the reasons given above with respect to Claim 1, 13, 20, 24, 36, 43, 44, 51, 52, 53, or 54. Reconsideration is respectfully requested.

III. CONCLUSIONS & MISCELLANEOUS

For the reasons set forth above, all of the pending claims are now in condition for allowance. The Examiner is respectfully requested to contact the undersigned by telephone relating to any issue that would advance examination of the present application.

A petition for extension of time, to the extent necessary to make this reply timely filed, is hereby made. If applicable, a law firm check for the petition for extension of time fee is enclosed herewith. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to charge any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

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/zhichonggu#56543/

Zhichong Gu

Reg. No. 56,543

2055 Gateway Place, Suite 550
San Jose, CA 95110-1089
Telephone: (408) 414-1236
Facsimile: (408) 414-1076